

KILPATRICK TOWNSEND & STOCKTON LLP
David E. Sipiora (SBN 124951)
Kristopher L. Reed (SBN 235518)
Matthew C. Holohan (SBN 239040)
1400 Wewatta St., Suite 600
Denver, CO 80202
Telephone: (303) 571-4000
Facsimile: (303) 571-4321
Email: dsipiora@kilpatricktownsend.com
kreed@kilpatricktownsend.com
mholohan@kilpatricktownsend.com

Robert J. Artuz (SBN 227789)
Eighth Floor, Two Embarcadero Center
San Francisco, CA 94111
Telephone: (415) 273-4713
Facsimile: (415) 576-0300
Email: rartuz@kilpatricktownsend.com

Attorneys for Plaintiff

AVAGO TECHNOLOGIES GENERAL IP (SINGAPORE) PTE. LTD.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

AVAGO TECHNOLOGIES GENERAL IP
(SINGAPORE) PTE. LTD.,

Plaintiff,

v.

ASUSTEK COMPUTER INC. and ASUS
COMPUTER INTERNATIONAL,

Defendants.

Case No.: 3:15-CV-04525-EMC

**STIPULATION AND [PROPOSED]
ORDER REGARDING JUDGMENT OF
NON-INFRINGEMENT OF THE '730
PATENT**

1 WHEREAS, Plaintiff Avago Technologies General IP (Singapore) Pte. Ltd. (“Avago”)
2 and Defendants ASUSTeK Computer Inc. and ASUS Computer International (collectively,
3 “ASUS”) stipulate and move for entry of judgment of non-infringement under asserted Claims 1-
4 5, 9, 12, 18-21, and 31-34 of U.S. Patent No. 5,670,730 (the “’730 Patent”) as to all Accused
5 Products under the Court’s Order Re Claim Construction (Dkt. No. 203); and

6 WHEREAS, entry of judgment of non-infringement now will allow the parties to forego
7 further expense and burden in litigation of Claims 1-5, 9, 12, 18-21, and 31-34 of the ’730 Patent,
8 while preserving Avago’s right to appeal the Court’s Order re Claim Construction (Dkt. No. 203);

9 IT IS HEREBY STIPULATED AND AGREED by Avago and ASUS, subject to the
10 approval of the Court, as follows:

11 1. This is a patent infringement action brought by Avago against ASUS. Avago filed
12 this patent litigation against ASUS on February 20, 2015, in the United States District Court for
13 the Eastern District of Texas. *See* Dkt. No. 1. The patents-in-suit include U.S. Patent Nos.
14 5,670,730; 5,870,087; 6,188,835; 6,430,148; 6,982,663; 6,744,387; and 5,982,830 (collectively,
15 the “Asserted Patents”).

16 2. Avago has accused certain electronic devices, namely certain desktop computers,
17 laptop computers, and tablets, of infringing the ’730 Patent (the “Accused Products”) as identified
18 in Plaintiff’s First Amended Disclosure of Asserted Claims and Infringement Contentions Under
19 Patent L.R. 3.

20 3. This case was transferred to the Northern District of California in September 2015.
21 Dkt. No. 68.

22 4. The parties have disputed the construction of the “first header” term found in
23 independent Claim 1 of the ’730 Patent. Avago proposed the following construction: “a data
24 structure on a music chip which includes information relating to the way the music tracks were
25 encoded in the memory of the music chip for use by the audio player in decoding the stored
26 music.” Dkt. 170-1 at 11. ASUS proposed the following construction: “a single data structure
27 that contains information corresponding to the way in which pre-recorded audio tracks are
28

1 encoded for storage in memory, which is used by the audio player to decode tracks for playback.”
 2 *Id.*

3 6. On May 27, 2016, the Court issued its Order Re Claim Construction construing the
 4 disputed claim terms of the Asserted Patents. Dkt. No. 203. With regard to the “first header”
 5 claim term of the ’730 Patent, the Court adopted the following construction: “A single data
 6 structure that includes information used by the audio player to decode the collection of individual
 7 tracks of audio stored in memory [*i.e.*, the *B&N* Construction].” Dkt. No. 203 at 3.

8 7. Avago and ASUS stipulate that, given the Court’s construction of the “first
 9 header” term, the Accused Products do not infringe the asserted claims of the ’730 Patent.

10 8. The parties respectfully request that the Court enter judgment of non-infringement
 11 by the Accused Products as to the ’730 Patent to conserve judicial resources and to avoid the time
 12 and expense of further discovery and motion practice related to the ’730 Patent. Upon entry of
 13 final judgment in this case resolving the remaining Asserted Patents, Avago may file a notice of
 14 appeal as to the Court’s construction of the “first header” claim term in the ’730 Patent in the
 15 Courts Order Re Claim Construction (Dkt. No. 203).

16 **IT IS SO AGREED AND STIPULATED this 1st day of July, 2016:**

17 Dated: July 1, 2016

KILPATRICK TOWNSEND & STOCKTON LLP

18 By: /s/ David E. Sipiora
 19 David E. Sipiora

20 *Attorneys for Plaintiff Avago Technologies General*
IP (Singapore) Pte. Ltd.

21 Dated: July 1, 2016

ALSTON & BIRD, LLP

22 By: /s/ Michael J. Newton
 23 Michael J. Newton

24 *Attorneys for Defendants ASUSTek Computer Inc.*
and ASUS Computer International

25 **IT IS SO ORDERED.**

26 Dated: July 5, 2016

27 UNITED STATES

